



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

ROBERT W. SWANSON  
ACTING DIRECTOR

### **Analysis of Enrolled House Bill 5319**

**Topic:** Counting of Abstentions in Shareholder Votes  
**Sponsor:** Representative Schuitmaker  
**Co-Sponsors:** Representatives Huizenga, Vander Veen, Baxter, Wenke, Taub, Tobocman  
**Committee:** House Commerce  
Senate Economic Development, Small Business & Regulatory Reform  
**Date Introduced:** October 18, 2005  
**Date Enrolled:** March 2, 2006  
**Date of Analysis:** Revised March 3, 2006

**Position:** The Department of Labor & Economic Growth is neutral on the bill.

### **Problem/Background:**

Clarification is necessary in light of concerns expressed by some companies that ambiguities in counting votes is undesirable and can lead to unnecessary litigation. The changes in this bill and House Bill 5319 are modeled after provisions in the Model Act.

According to the Business Law Section of the State Bar, "the Michigan Control Share Act has proved to be a trap for the unwary because of its broad applicability. It is also no longer an important tool to protect corporations and shareholders from takeovers, as there are more effective tools now available, such as Chapter 7A and shareholder rights plans." Many experienced lawyers believe that the act is more helpful to bidders than defenders. In one recent takeover the act was used effectively as an offensive weapon. The 2003 amendments dealt only with the formation of a group and did not address other ambiguities or increase the act's effectiveness.

### **Description of Bill:**

This bill deletes the reference to Chapter 7B, the Control Share Acquisitions. The bill provides that if shareholders abstain from a vote their vote is not considered in the total number of votes cast on that action unless there is a limitation provided in their articles of incorporation.

### **Arguments For:**

It will now be easier for corporations to get proposals passed by the shareholders. It stops shareholders who do not take a position on the proposal from blocking it by abstaining.

Because of the Michigan Control Act's unhelpfulness as a takeover defense and the potential for deployment in unintended fashions, its repeal is appropriate.

### **Arguments Against:**

Deleting the reference to sections 794 and 798 in the Control Share Acquisition provisions creates an internal conflict within the act and creates the appearance that the legislature intended

to repeal the voting restriction in the Control Share Acquisition provisions.

Abstaining from a vote is an important choice for shareholders and it is a statement by them also, stating that we are not sure; we need more information before we can make up our minds. If the vote is stalled because there is not a majority of votes for or against a proposal, it does not make it a bad thing just because not everybody is sure on the issue. This bill makes abstaining from a vote useless, unless the articles state that an abstention does count as a vote cast.

**Supporters:**

Business Law Section of the State Bar of Michigan

**Opponents:**

The Department of Labor & Economic Growth opposed House Bill 5322, because the problem that the bill was designed to solve had already been addressed in the expedited fee bills. The only opposition to any of the bills in this package was to House Bill 5322. The Department of Labor & Economic Growth opposed House Bill 5322, because the problem that the bill was designed to solve had already been addressed in the expedited fee bills.

**Other Pertinent Information:**

This bill is part of a package of bills (House Bills 5315-23) developed by the Business Law Section of the State Bar of Michigan as part of a regular review of Michigan's corporation laws. These reviews occur roughly at four-year intervals. The only opposition to any of the bills in this package was to House Bill 5322.

**Administrative Rules Impact:**

The bill will have no impact on administrative rules.

**Fiscal Impact:**

The bill will have no fiscal impact.